

AMENDED IN SENATE JUNE 16, 2005

AMENDED IN ASSEMBLY MAY 26, 2005

AMENDED IN ASSEMBLY MAY 4, 2005

AMENDED IN ASSEMBLY APRIL 14, 2005

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL

No. 178

**Introduced by Assembly Members Koretz, Chan, *Jerome Horton*,
and Vargas**

**(Coauthors: Assembly Members Jones, Levine, Pavley, and
Saldana)**

(Coauthors: Senators *Alquist*, Ortiz, Romero, and Soto)

January 24, 2005

An act to add Part 8 (commencing with Section 14950) to Division 12 of the Health and Safety Code, relating to cigarettes.

LEGISLATIVE COUNSEL'S DIGEST

AB 178, as amended, Koretz. California Cigarette Fire Safety and Firefighter Protection Act.

Existing law requires the State Fire Marshal to adopt regulations that specify standards for the special design of cigarette lighters with respect to safety features that prevent operation of the lighters by children 5 years of age or younger.

This bill would prohibit the sale of cigarettes unless the manufacturer of those cigarettes certifies to the Attorney General ~~and the Bureau of Home Furnishings and Thermal Insulation in the Department of Consumer Affairs~~ that the cigarettes have been tested by the manufacturer in accordance with standards established by the American Society of Testing and Materials and no more than 25% of

the cigarettes it manufactures exhibit full-length burns when tested. The bill would require cigarette manufacturers to mark packages of cigarettes to be sold in California to show compliance with these provisions and would require manufacturers, distributors, wholesalers, and retailers to permit an employee of the State Board of Equalization to inspect these markings. Failure or refusal to allow an inspection would subject a person to a civil penalty not to exceed \$1,000.

The bill would impose a civil penalty on manufacturers, distributors, wholesalers, and others who knowingly sell or offer to sell cigarettes in violation of these provisions, on retailers who knowingly sell or offer to sell cigarettes in violation of these provisions, and on manufacturers that knowingly make false certifications in violation of these provisions. The bill would require these civil penalties to be deposited in the Cigarette Fire Safety and Firefighter Protection Fund which the bill would create in the State Treasury and would make moneys in the fund available to the State Board of Equalization to offset costs for inspecting, seizing, and disposing of cigarettes ~~and to the bureau to offset administrative costs associated with implementation of the bill.~~

The bill would become inapplicable if federal fire safety standards that preempt these provisions are enacted and the State Board of Equalization so notifies the Secretary of State.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. (a) The Legislature finds and declares as
2 follows:

3 (1) Cigarettes are the leading cause of fire deaths in the United
4 States each year, claiming 1,000 lives and causing nearly 2,500
5 injuries and four billion dollars (\$4,000,000,000) in societal costs
6 for deaths, injuries, and property damage.

7 (2) Technology exists to significantly reduce the number of
8 fires caused by cigarettes.

9 (3) The State of New York enacted a cigarette fire safety
10 regulation effective June 28, 2004, that requires cigarettes sold in
11 that state to meet a fire safety performance standard. Canada is
12 scheduled to implement the New York State fire safety standard
13 in the fall of 2005.

(4) New York State's cigarette fire safety standard is based upon decades of research by the National Institute of Standards and Technology, congressional research groups, and private industry.

(5) Cigarettes meeting fire safety standards do not increase the costs to consumers and do not create hardships for cigarette retailers, wholesalers, or manufacturers.

(6) It is the intent of the Legislature to adopt the cigarette fire safety standard that is in effect in New York State to reduce the likelihood that cigarettes will cause fires, which result in deaths, injuries, and property damage. It is further the intent of the Legislature to adopt this cigarette fire safety standard with a minimum of cost to the state.

(b) The Legislature hereby determines that it is within the police powers of the state to protect the health and safety of the people of the state by establishing fire safety standards for cigarettes sold in this state.

SEC. 2. Part 8 (commencing with Section 14950) is added to Division 12 of the Health and Safety Code, to read:

PART 8. CIGARETTES

14950. (a) This part shall be known and may be cited as the California Cigarette Fire Safety and Firefighter Protection Act.

(b) As used in this part, the following terms have the following meanings:

(1) "Board" means the State Board of Equalization.

~~(2) "Bureau" means the Bureau of Home Furnishings and Thermal Insulation in the Department of Consumer Affairs.~~

~~(3)~~

(2) "Cigarette" means a cigarette as defined in Section 30003 of the Revenue and Taxation Code.

~~(4)~~

(3) "Distributor" means a distributor as defined in Section 30011 of the Revenue and Taxation Code.

~~(5)~~

(4) "Manufacturer" means any of the following:

(A) An entity that manufactures or otherwise produces cigarettes or causes cigarettes to be manufactured or produced anywhere that *the* manufacturer intends to be sold in the state,

1 including cigarettes intended to be sold in the United States
2 through an importer.

3 (B) The first purchaser anywhere that intends to resell in the
4 United States cigarettes manufactured anywhere that the original
5 manufacturer or maker does not intend to be sold in the United
6 States.

7 (C) An entity that becomes a successor of an entity described
8 in subparagraph (A) or (B).

9 ~~(6)~~

10 (5) "Offer to sell" means to offer or agree to sell.

11 ~~(7)~~

12 (6) "Package" means package as defined in Section 30015 of
13 the Revenue and Taxation Code.

14 ~~(8)~~

15 (7) "Quality control and quality assurance program" means the
16 laboratory procedures implemented to ensure that operator bias,
17 systematic and nonsystematic methodological errors, and
18 equipment-related problems do not affect the results of the
19 testing. This program ensures that the testing repeatability
20 remains within the required repeatability values stated in
21 paragraph (5) of subdivision (a) of Section 14952 for all test
22 trials used to certify cigarettes in accordance with this part.

23 ~~(9)~~

24 (8) "Repeatability" means the range of values within which
25 the repeat results of cigarette test trials from a single laboratory
26 will fail 95 percent of the time.

27 ~~(10)~~

28 (9) "Retailer" means a person who engages in the sale of
29 cigarettes, but not for the purpose of resale.

30 ~~(11)~~

31 (10) "Sale" or "sell" means any transfer, exchange, or barter,
32 in any manner or by any means whatever, or any agreement for
33 these purposes. The giving of cigarettes as samples, prizes, or
34 gifts, and the exchanging of cigarettes for any consideration other
35 than money are considered sales.

36 ~~(12)~~

37 (11) "Stamp and meter impression" means stamp and meter
38 impression as defined in Section 30018 of the Revenue and
39 Taxation Code.

40 ~~(13)~~

1 (12) "Wholesaler" means a wholesaler as defined in Section
2 30016 of the Revenue and Taxation Code.

3 14951. (a) ~~(a)~~—A person shall not sell, offer, or possess for
4 sale in this state cigarettes not in compliance with the following
5 requirements:

6 (1) The cigarettes are tested by the manufacturer in accordance
7 with the test method prescribed in subdivision (a) of Section
8 14952.

9 (2) The cigarettes meet the performance standard specified in
10 subdivision (b) of Section 14952.

11 (3) The cigarettes meet the marking requirement of Section
12 14954.

13 (4) A written certification is filed by the manufacturer with the
14 Attorney General in accordance with Section 14953.

15 (b) This section does not prohibit distributors, wholesalers, or
16 retailers from selling their inventory of cigarettes existing on
17 January 1, 2006, if ~~one~~ both of the following conditions ~~is~~ are
18 met:

19 (1) The distributors, wholesalers, or retailers can establish that
20 California tax stamps or meter impressions were affixed to the
21 cigarettes pursuant to Section 30163 of the Revenue and
22 Taxation Code before January 1, 2006.

23 (2) The distributors, wholesalers, or retailers can establish that
24 the inventory was purchased before January 1, 2006, in
25 comparable quantity to the inventory purchased during the same
26 period of 2005.

27 (c) This section does not prohibit a person or entity from
28 manufacturing or selling cigarettes that do not meet the
29 requirements of subdivision (a) if the cigarettes are or will be
30 stamped or metered for sale in another state or are packaged for
31 sale outside the United States.

32 14952. (a) (1) Testing of cigarettes shall be conducted in
33 accordance with the American Society of Testing and Materials
34 (ASTM) ~~standard~~ *Standard* E2187-04, "Standard Test Method
35 for Measuring the Ignition Strength of Cigarettes." However, ~~the~~
36 ~~bureau may adopt~~ a subsequent ASTM Standard Test Method
37 *may be adopted* upon finding that the subsequent method does
38 not result in a change in the percentage of full-length burns
39 exhibited by any tested cigarette when compared to the
40 percentage of full-length burns that the same cigarette would

1 exhibit when tested in accordance with ASTM Standard
2 E2187-04 and the testing requirements in paragraphs (2) to (5),
3 inclusive, and the performance standard specified in subdivision
4 (b).

5 (2) Testing shall be conducted on 10 layers of filter paper.

6 (3) Forty replicate tests shall comprise a complete test trial for
7 each cigarette tested.

8 (4) The performance standard required by subdivision (b) shall
9 only be applied to a complete test trial.

10 (5) Laboratories conducting testing in accordance with this
11 subdivision shall implement a quality control and quality
12 assurance program that includes a procedure that will determine
13 the repeatability of the testing results. The repeatability value
14 shall be no greater than 0.19 pursuant to subdivision (b).

15 (b) When tested in accordance with subdivision (a), no more
16 than 25 percent of the cigarettes tested in a test trial shall exhibit
17 full-length burns.

18 (c) Each cigarette listed in a certification submitted pursuant to
19 Section 14953 that uses lowered permeability bands in the
20 cigarette paper to achieve compliance with the performance
21 standard set forth in subdivision (b) shall have at least two
22 nominally identical bands on the paper surrounding the tobacco
23 column. At least one complete band shall be located at least 15
24 millimeters from the lighting end of the cigarette. For cigarettes
25 on which the bands are positioned by design, there shall be at
26 least two bands fully located at least 15 millimeters from the
27 lighting end and 10 millimeters from the filter end of the tobacco
28 column or 10 millimeters from the labeled end of the tobacco
29 column for a nonfiltered cigarette.

30 (d) The manufacturer or manufacturers of a cigarette that ~~the~~
31 ~~bureau determines~~ cannot be tested in accordance with the test
32 method prescribed in subdivision (a) ~~shall propose~~ *may employ* a
33 test method and performance standard for that cigarette ~~to the~~
34 ~~bureau. Upon approval of the proposed test method and a~~
35 ~~determination by the bureau that the performance standard~~
36 ~~proposed by the manufacturer or manufacturers that is equivalent~~
37 ~~to the performance standard prescribed in subdivision (b), the~~
38 *The* manufacturer or manufacturers may employ that test method
39 and performance standard to certify that cigarette pursuant to

1 Section 14953. All other applicable requirements of this part
2 shall apply to the manufacturer or manufacturers of that cigarette.

3 (e) This section does not require additional testing if cigarettes
4 are tested consistent with this section for any other purpose.

5 (f) In order to ensure compliance with the performance
6 standard specified in subdivision (b), data from testing conducted
7 by manufacturers to comply with this performance standard shall
8 be kept on file by these manufacturers for a period of three years
9 and shall be sent ~~to the bureau upon its request~~ and to the
10 Attorney General ~~upon its~~ *his or her* request.

11 (g) This section shall be implemented in accordance with the
12 implementation and substance of the New York Fire Safety
13 Standards for Cigarettes that are effective on June 28, 2004.

14 14953. (a) Each manufacturer shall submit a written
15 certification to the Attorney General ~~and the bureau~~ attesting that
16 each cigarette listed in the certification has been tested in
17 accordance with subdivision (a) of Section 14952 and meets the
18 performance standard set forth in subdivision (b) of that section.

19 (b) Each cigarette listed in the certification shall be described
20 with the following information:

21 (1) Brand.

22 (2) Style (for example, light, ultra light).

23 (3) Length in millimeters.

24 (4) Circumference in millimeters.

25 (5) Flavor (for example, menthol, chocolate) if applicable.

26 (6) Filter or nonfilter.

27 (7) Package description (for example, soft pack, box).

28 (8) Marking approved in accordance with Section 14954.

29 (c) Each cigarette certified under this section shall be
30 recertified every three years.

31 (d) Manufacturers certifying cigarettes in accordance with this
32 section shall provide a copy of the certifications to all distributors
33 and wholesalers to which they sell cigarettes and shall also
34 provide sufficient copies of an illustration of the cigarette
35 packaging marking utilized by the manufacturer pursuant to
36 Section 14954 for each retailer to which the distributors and
37 wholesalers sell cigarettes. Distributors and wholesalers shall
38 provide a copy of these cigarette packaging markings received
39 from manufacturers to all retailers to which they sell cigarettes.

1 14954. (a) Cigarettes that are certified by a manufacturer in
2 accordance with Section 14953 shall be marked on the packaging
3 to indicate compliance with the requirements of this part.
4 Marking shall be in 8-point type or larger and consist of one of
5 the following:

6 (1) Modification of the universal product code to include a
7 visible mark printed at or around the area of that code. The mark
8 may consist of alphanumeric or symbolic characters permanently
9 stamped, engraved, embossed or printed in conjunction with the
10 universal product code.

11 (2) Any visible combination of alphanumeric or symbolic
12 characters permanently stamped, engraved, or embossed upon the
13 cigarette packaging or cellophane wrap.

14 (3) Printed, stamped, engraved, or embossed text on the
15 cigarette packaging that indicates that the cigarettes meet
16 California standards.

17 ~~(b) Before the certification of any cigarette, a manufacturer~~
18 ~~shall present its proposed marking to the bureau for approval.~~
19 ~~Upon receipt of the request, the bureau shall approve or~~
20 ~~disapprove the marking offered. Unless the bureau determines~~
21 ~~that the New York Fire Safety Standards for Cigarettes have~~
22 ~~significantly changed since those standards were effective on~~
23 ~~June 28, 2004, the bureau shall approve any marking in use and~~
24 ~~approved for the sale of cigarettes in the State of New York.~~
25 ~~Proposed markings shall be deemed approved if the bureau fails~~
26 ~~to act within 10 business days of receiving a request for approval.~~

27 *(b) Before a certified cigarette can be sold in the state, a*
28 *manufacturer shall submit its proposed marking to the Attorney*
29 *General. A marking in use and approved for the sale of*
30 *cigarettes in the State of New York shall be deemed accepted.*

31 (c) A manufacturer must use only one marking and must apply
32 this marking uniformly for all packagings, including, but not
33 limited to, packages, cartons, and cases, and brands marketed by
34 that manufacturer.

35 ~~(d) A manufacturer shall not modify its approved marking~~
36 ~~unless the modification is approved by the bureau in accordance~~
37 ~~with this section.~~

38 *(d) A manufacturer who modifies its marking shall notify the*
39 *Attorney General of this change and submit a copy of the new*
40 *marking which shall comply with subdivision (a).*

1 14955. (a) Any manufacturer, distributor, wholesaler, or any
2 other person or entity that knowingly sells or offers to sell
3 cigarettes other than through retail sale in violation of this part is
4 subject to a civil penalty not to exceed ten thousand dollars
5 (\$10,000) for each sale.

6 (b) Any retailer that knowingly sells or offers to sell cigarettes
7 in violation of this part shall be subject to the following:

8 (1) A civil penalty not to exceed five hundred dollars (\$500)
9 for each sale or offer for sale in which the total number of
10 cigarettes sold or offered for sale does not exceed 50 packages of
11 cigarettes.

12 (2) A civil penalty not to exceed one thousand dollars (\$1,000)
13 for each sale or offer for sale in which the total number of
14 cigarettes sold or offered for sale exceeds 50 packages of
15 cigarettes.

16 (c) The civil penalties imposed pursuant to subdivisions (a)
17 and (b) of this section shall be deposited in the Cigarette Fire
18 Safety and Firefighter Protection Fund.

19 (d) In addition to any other penalty prescribed by law, any
20 corporation, partnership, sole proprietor, limited partnership, or
21 association engaged in the manufacture of cigarettes that
22 knowingly makes a false certification pursuant to Section 14953
23 shall be subject to a civil penalty not to exceed ten thousand
24 dollars (\$10,000) for each false certification.

25 (e) Any person violating any other provision in this part shall
26 be subject to a civil penalty not to exceed one thousand dollars
27 (\$1,000) for each violation. Any cigarettes that have been sold or
28 offered for sale that do not comply with the performance
29 standard required by Section 14952 shall be deemed contraband
30 and subject to seizure and disposal by the board.

31 (f) The Attorney General may bring an action on behalf of the
32 people of the state to restrain further violations of this part and
33 for any other relief that may be appropriate. In any action by the
34 Attorney General to enforce this act, the Attorney General shall
35 be entitled to recover costs of investigation, expert witness fees,
36 costs of the action, and reasonable attorney's fees.

37 (g) It shall be a defense in any action for civil penalties, that a
38 distributor, wholesaler, retailer, or any person in the stream of
39 commerce relied in good faith on the manufacturer's *certificate*

1 *and* marking that the cigarettes comply with the requirements of
2 this part.

3 14956. (a) Manufacturers, distributors, wholesalers, and
4 retailers shall permit an employee of the board, upon presentation
5 of the appropriate identification and credentials, to inspect
6 cigarette packagings to ensure they are marked in accordance
7 with Section 14954.

8 (b) Any person that refuses to allow an inspection authorized
9 under this section is subject to the penalty imposed by Section
10 14958.

11 14957. Cigarettes to which are affixed tax stamps or meter
12 impressions in violation of subdivision (a) of Section 14951 shall
13 result in the seizure by the board of all cigarettes in the
14 possession of the person in violation of this part. Any cigarettes
15 seized by the board shall be deemed forfeited.

16 14958. Any person who knowingly fails or refuses to allow
17 an inspection by the board, pursuant to Section 14956, is subject
18 to a civil penalty not to exceed one thousand dollars (\$1,000) for
19 each failure or refusal.

20 14959. This part shall cease to be applicable if federal fire
21 safety standards for cigarettes that preempt this act are enacted
22 and take effect subsequent to the effective date of this act and the
23 board so notifies the Secretary of State.

24 SEC. 3. The Cigarette Fire Safety and Firefighter Protection
25 Fund is hereby created in the State Treasury. Upon appropriation
26 by the Legislature, moneys deposited into the fund shall be made
27 ~~available to the following:~~ *available to the State Board of*
28 *Equalization to offset minor administrative costs for inspecting,*
29 *seizing, and disposing of cigarettes.*

30 ~~(a) The State Board of Equalization to offset minor~~
31 ~~administrative costs for inspecting, seizing, and disposing of~~
32 ~~cigarettes.~~

33 ~~(b) The Bureau of Home Furnishings and Thermal Insulation~~
34 ~~in the Department of Consumer Affairs to offset minor~~
35 ~~administrative costs associated with implementation of this act.~~